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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

13 MARC OPPERMAN, et al.,
 14 Plaintiffs,
 15 v.
 16 PATH, INC., et al.,
 17 Defendants.

Case No.: 13-cv-00453-JST

**PATH, INC.'S REPLY IN SUPPORT OF ITS
 PARTIAL MOTION TO DISMISS SECOND
 CONSOLIDATED AMENDED CLASS
 ACTION COMPLAINT**

DATE: December 2, 2014
 TIME: 2:00 p.m.
 COURTROOM: 9
 JUDGE: Hon. Jon S. Tigar

**THIS DOCUMENT RELATES TO THE
 FOLLOWING CASES:**
Opperman v. Path, Inc., No. 13-cv-00453-JST
Hernandez v. Path, Inc., No. 12-cv-1515-JST

REPLY MEMORANDUM

1
2 Plaintiffs' do not dispute that their Second Amended Complaint makes no new factual
3 allegations in support of their common law conversion claim beyond what was alleged in the
4 Consolidated Amended Complaint that this Court previously dismissed. Instead, Plaintiffs
5 implicitly ask the Court to view those allegations through a different lens by citing to an
6 inapplicable California statute and inapposite case law concerning contractually or statutorily
7 created exclusive rights that Plaintiffs have not alleged exist here. As set forth in the Reply briefs
8 filed by Defendants Electronic Arts, Inc., Chillingo, Ltd., Rovio Entertainment Ltd, and ZeptoLab
9 UK Ltd. (Dkt. No. 512); Yelp Inc. and Foodspotting, Inc. (Dkt. No. 513); Twitter, Inc. (Dkt. No.
10 518); and Instagram, LLC, which Path hereby adopts and incorporates by reference, Plaintiffs'
11 conversion claim against Path should be dismissed for lack of Article III standing and for failure
12 to state a claim upon which relief may be granted.

13 Plaintiffs have had multiple opportunities over two-and-a-half years to try to plead a claim
14 for common law conversion. Throughout those efforts, they have not added any substantively
15 new factual allegations that could support a conversion claim. No amount of repleading can cure
16 the defects that served as the basis for Judge Gonzalez Rogers' dismissal of the conversion claim
17 against Path in *Hernandez v. Path, Inc.*, No. 12-cv-01515-YGR, 2012 WL 5194120, at *1-2
18 (N.D. Cal. Oct. 19, 2012) or in this Court's May 14, 2014 Order (Dkt. No. 67). *See Albrecht v.*
19 *Lund*, 845 F.2d 193, 196 (9th Cir. 1988) (dismissal of claim with prejudice is proper where
20 allegations of other facts consistent with the challenged pleading could not possibly cure the
21 deficiency, rendering amendment futile). Accordingly, dismissal should be with prejudice.

22
23 Dated: October 29, 2014

FENWICK & WEST LLP

24 By: /s/ Tyler G. Newby
25 Tyler G. Newby

26 Attorneys for Defendant
27 PATH, INC.
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